

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 689 of 1980

For Approval and Signature:

Hon'ble THE ACTING CJ R.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

M M TALPADA

Versus

STATE OF GUJARAT

Appearance:

MR GIRISH PATEL for Petitioner
MR YM THAKKAR,AGP for Respondents.

CORAM : THE ACTING CJ R.A.MEHTA
Date of decision: 17/04/97

ORAL JUDGEMENT

1. By this petition, the petitioner prays for quashing of adverse remarks for the years 1976-77, 1977-78 and 1978-79 and to quash the proceedings of the Selection Committee for promotion to the post of

Superintendent of Prohibition and Excise, Class I and for quashing the promotions of respondents nos. 4 and 5 and for a direction to constitute a new Selection Committee for the purpose of the said selection.

2. The petitioner is a Superintendent of Prohibition and Excise, Class II. He was appointed on February 10, 1972 on probation for a period of two years and that probation was extended and continued from time to time for five years. By an order dated April 1, 1977, he was continued on long term basis on that post of Superintendent of Prohibition and Excise, Class II. By memorandum dated September 19, 1977, he was declared to have completed his probation period satisfactorily with effect from April 1, 1977.

3. The rules for promotion to the post of Superintendent of Prohibition and Excise, Class I provide for promotion on the basis of proved merit and efficiency. On January 23, 1980, the Selection Committee met and considered the past record of five years of the petitioner, respondents nos. 4 and 5 amongst others. Respondents nos. 4 and 5 were selected and promoted on February 20, 1980. The respondent no. 4 is a direct recruit in Class II and the respondent no. 5 was a promotee in Class II. Respondent no. 4 had satisfactorily completed his probation period earlier in 1976.

4. The adverse remarks for the three respective years are at annexures-G, Q and S to the petition and these adverse remarks are as follows:-

For the year 1976-77:

"Exercise of delegated powers (indicate whether he has properly exercised powers delegated to him or has a tendency to refer cases back for guidance even when he has powers to decide them).

Has misused powers in granting Denatured spirit quota to Chemech Engineering, Gundalav, Valsad, in liberal grant of emergency permit and health permits and in granting intentionally two emergency permits in one family against rules.

Has soft attitude towards licensees selling french polish and has tendency to help them out of way.

General Remarks

Unfaithful, unreliable and untrustworthy.

(1): Has been warned three times;

(i): For vindictive tactics with M/s Navin Chemicals, Vapi;

(ii): For grant of 12000 litres of additional quota to Chemech Engineering, Gundalav, Valsad against recommendations of the Industries Commissioner without proper inquiry and justification, in a rush through manner;

(2): He tried to pressurize his subordinate staff by threats to disclose their details of inquiry made by Dy. Director of Prohibition and Excise.

(3): Has been in the habit of making false accusations using offensive language devoid of decorum and discipline against superior officer in challenging mood with arrogant attitude;

(4): Has been in the habit of meeting higher officers and Ministers by leaving his charge and by manipulating his movements."

Adverse Remarks for the year 1977-78:

"Mediocre. Sometimes erratic in his behaviour and in writing to superior officers. Tendency to see higher officers in Sachivalaya without permission from the Director. Had shown disrespect towards Chief Minister and Secretary, Labour, Social Welfare and Tribal Development Department, by shouting slogans with others on 24.12.77 in Nomedic Tribes and Denotified Tribes Sammelan held at Harijan Ashram, Sabarmati."

Adverse Remarks for the year 1978-79:

"He is of somewhat arrogant nature. He has been warned not to leave the HQ without permission. His work was just satisfactory."

5. The learned Counsel for the petitioner has mainly challenged his supersession and non selection on the following grounds:-

- (1) The Committee had taken into consideration irrelevant and impermissible material; namely adverse remarks which were communicated very late or against which representations were pending, remarks were wholly unjustified as seen from the subsequent orders of exoneration;
- (2) That a member of the Committee namely the Director was strongly biased against the petitioner and, therefore, his presence in the Committee has vitiated the selection process.

6. The learned Counsel for the respondents has submitted that the Selection Committee was constituted as per the Government Resolution dated January 19,1980 consisting of the following persons:

- (1) Secretary, Labour, Social Welfare and Tribal Development Department;
- (2) Director of Prohibition and Excise;
- (3) Deputy Secretary in charge of Prohibition and Excise Department.

7. The said Selection Committee met on January 23,1980 and considered cases of all eligible Class II Superintendents of Prohibition and Excise for promotion to the post of Superintendent of Prohibition and Excise, Class I and confidential reports of all such eligible officers for the last five years were scrutinised. The petitioner's confidential reports from 1974-75 to 1978-79 were considered, last three of which contained adverse remarks which were already communicated to the petitioner and the petitioner's representations against the said adverse remarks for the years 1976-77 and 1977-78 were rejected and that decision was also communicated to the petitioner on January 1,1980. The petitioner was not found fit for promotion and was not selected. Respondents nos. 4 and 5 were selected for promotion and respondent no.4 was selected to fill in the vacancy for promotees and respondent no.5 had been temporarily promoted pending recruitment of a direct candidate selected by the Gujarat Public Service Commission.

8. The learned Counsel for the respondents also submitted that the petitioner's probation was required to be extended from time to time and he satisfactorily

completed probation only after five years in February 1977, whereas the respondent no.4 had satisfactorily completed the probation early. The learned Counsel for the respondents also submitted that the petitioner has been superseded on two subsequent occasions also as he was not found suitable for promotion even on subsequent occasions by other committees, in which the person against whom bias is alleged was not a member. He has, therefore, submitted that the decision of not selecting the petitioner in the year 1980 is fully justified in law and facts. As far as subsequent supersessions are concerned, the fact of such supersession is admitted by the petitioner. However, it is submitted that subsequent supersession on subsequent facts or record and in comparison with other candidates is not at all relevant for considering the question of supersession in January 1980. The learned Counsel for the respondents is right in this submission. Though the subsequent events cannot have any effect on consideration and promotion in 1980 when the relevant record is past record of five years, similarly subsequent suspension, prosecution, conviction and/or acquittal of the petitioner would also be of no consequence nor are the same matter of present controversy.

9. As far as the first two years are concerned, there are no adverse remarks, but the fact remains that the petitioner could not complete probation period satisfactorily for five years and his probation period had to be extended from time to time. As far as the year 1976-77 is concerned, the adverse remarks which are at annexure G to the petition show that he had misused powers and was not considered reliable and he had been warned on three occasions. The other remarks also indicate that he was in the habit of making false accusations, using abusive language. The petitioner had a representation against these adverse remarks and the same was rejected on January 1, 1990.

10. The next year's adverse remarks are of the year 1977-78 and they are at annexure Q to the petition. The said remarks are that the petitioner was a mediocre and sometimes erratic in his behaviour and sometimes in writing to his superiors and had a tendency to see higher officers in Sachivalaya without the permission of the Director. In this year, the incident of slogan shouting in presence of Chief Minister and Secretary of the Department is also referred as an adverse remarks against the petitioner. In respect thereof, there was a departmental inquiry against him and he has been exonerated in that inquiry by an order dated June 16, 1982

annexure-IV to the affidavit-in-rejoinder. Therefore, this adverse remark in the confidential report for the year 1977-78 is clearly unjustified and is required to be expunged.

11. As far as the representation against the adverse remarks is concerned, it was rejected on January 1, 1980 and communicated to the petitioner because the selection committee had met.

12. The third year of adverse remarks is 1978-79. These remarks are at annexure-S wherein it is mentioned that the petitioner is of somewhat arrogant nature and he had been warned not to leave the headquarter without permission and that his work was just satisfactory. These remarks were communicated to the petitioner on January 23, 1980 and were received by the petitioner on January 25, 1980 whereas the selection committee had met on January 23, 1980 and taken these remarks into consideration. Thus, the petitioner had no opportunity whatsoever to make any representation against these adverse remarks. The petitioner had made representation on March 5, 1980. That representation has subsequently been rejected. The grievance of the petitioner is that adverse remarks communicated on January 23, 1980 could not have been taken into consideration by the selection committee which met on that day. Assuming that the petitioner is justified in making the grievance that the Selection Committee could not have taken into consideration these remarks on that date because the petitioner was not given any opportunity of making representation against the same, however, in such an eventuality, what the Court could have done is to direct the concerned authority to consider the representation and decide the same and in light of the decision on such representation, ask the Selection Committee to consider the question of selection afresh in light of the changed decision on adverse remarks, but in the present case, the representation has been rejected and, therefore, there is no change in the circumstance and even if the Selection Committee were to reconsider, the reconsideration would be on the same material with the same result.

13. The learned Counsel for the petitioner has submitted that the Director who was the member of the Selection Committee had a very strong prejudice and bias against the petitioner because the Director had thought that the petitioner had written some poems and sent them for publication in a magazine and those poems were directly attributable to the Director and it is submitted that this fact of bias would be clear from the fact that

the Department has issued a chargesheet against the petitioner on October 12, 1978 (annexure-X) wherein it is alleged that the petitioner had by writing three poems as mentioned in the chargesheet had indirectly threatened the Director and the Deputy Director and committed an act of indiscipline and the list of witnesses mentions the names of Director and Deputy Director. In that inquiry, the petitioner has been exonerated after ten years by an order dated March 8, 1989 annexure-V to the affidavit-in-rejoinder. In para 14.1 of the petition, the petitioner has alleged that on September 8, 1977, the Director had shown his excitement and annoyance towards the petitioner and threatened the petitioner that he had written the poems keeping the Director in mind and that he would spoil his confidential report and would see that the petitioner was dismissed from Government service. It is, therefore, submitted that the Director who was the complainant in respect of the charge and was witness in respect of that charge, was the Reviewing Officer in respect of the confidential report and was a member of the Selection Committee and having regard to his bias against the petitioner, the Director could not have been a member of the Selection Committee and the decision of the Selection Committee with such a member is said to be clearly vitiated. It is true that the Director was a member of the Selection Committee and that he was the complainant and the witness alleging that the petitioner had unfairly and improperly written some poem attributing to the Director and, therefore, the Director may have some grievance against the petitioner. However, having regard to the totality of circumstances, it cannot be said that he had disqualified himself from being a member of the Selection Committee. The confidential reports were written by the Deputy Director and not by the Director. As a Reviewing Officer, he has not made any additional adverse entry against the petitioner. He had merely endorsed the same as a Reviewing Officer. The further fact that the representations against these adverse remarks have been rejected shows that the adverse remarks were not made because of any bias. In these circumstances, it is not possible to believe that the Director was having such a personal bias against the petitioner that he had denied proper and objective consideration of the petitioner's case in the Selection Committee.

14. As far as the material before the Selection Committee is concerned, the only thing that could be excluded from the confidential reports is the incident of slogan shouting in presence of the Chief Minister and the Secretary of the Department for which the petitioner has

been exonerated. Except that, rest of the remarks in the three confidential reports do not require to be expunged and cannot be expunged.

15. Since the criteria for promotion is proved merit and efficiency, the petitioner could not have been selected and was rightly superseded.

There is no merit in the petition. Hence dismissed. Rule discharged. No costs.
